Ameritech Letter to Regina Keeney

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Attachment 1
Mar. 1996
CC 96-98

RECEIVED
APR 25 '96
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SECTION 251 DOES NOT AFFECT THE COMMISSION'S CURRENT ACCESS CHARGE RULES

One of the primary goals of the Telecommunications Act of 1996 ("the Act") is to facilitate the development of competition in the provision of local telephone service. To accomplish this goal, Section 251 requires, inter alia, that incumbent local exchange carriers ("LECs") provide local competitors with interconnection and unbundled access to their networks. Both the plain language of the Act and the legislative history make clear that Section 251 does not affect the Commission's current access charge regime that governs the access that LECs provide to interexchange carriers ("IXCs") for the origination or termination of telephone toll service.

A. Section 251(c)(2) does not apply to the origination or termination of telephone toll service.

Section 251 provides that any telecommunications carrier may request interconnection "for the transmission and routing of telephone exchange service and exchange access." Section 251(c)(2)(a)(emphasis added). The use of the term "exchange access" in this provision does not extend its requirements to the access that local carriers provide to them for the origination or termination of telephone toll service. To the contrary, the scope of this provision extends only to those local carriers that offer exchange services and exchange access services themselves. To the extent that a carrier, including an IXC, seeks to offer such exchange or exchange access services, Section 251(c)(2) would govern the necessary interconnection. It does not, however affect the current access charge regime.

This interpretation is supported by the definition of "exchange access." Section 3(a)(40) defines "exchange access" as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination

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of telephone toll services. (emphasis added). Clearly, when an IXC is purchasing access from a LEC it is not "offering access," rather, it is offering toll and private line services. Therefore, Section 251(c)(2) does not apply.

B. Section 251(c)(3) network elements used for the origination or termination of telephone toll service are subject to Section 201.

Section 251 (c)(3) imposes on an incumbent LEC "the duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis. . ."

While an IXC may purchase network elements under Section 251(c)(3) that would enable it to originate or terminate interstate telephone service, Section 251(c)(3) was not designed to circumvent the Commission's current access charge regime. Rather, the pricing for network elements used to originate or terminate interstate telephone service would be pursuant to access tariffs, not Section 252(d)(1). Section 251(d)(1) pricing applies only to those services subject to state jurisdiction as it is the state that determines whether the rate is just and reasonable. IXC access for the origination or termination of telephone toll service is subject to FCC regulation, and therefore is subject to Section 201.

C. Congress would not have granted States jurisdiction over interstate access arrangements.

Section 252 of the Act sets up a detailed process under which state commissions, not the FCC, are required to approve Section 251 interconnection agreements, and in the case of an impasse, arbitrate negotiations between parties. Given these provisions, the argument that Section 251 modifies interstate access charges cannot possibly be valid because it would transfer

regulation over access charges from the FCC to the States. Congress plainly did not intend such an outcome as it clearly conflicts with Section 251(i), which ratifies and leaves unaffected the Commission's jurisdiction over interstate, interexchange services, including access charges. Section 251 (i) states that "nothing in this section [251] shall be construed to limit or otherwise affect the Commission's authority under section 201." Therefore, Section 251 only governs services over which state commissions have jurisdiction.

D. Section 251(g), retaining the current access charge regime, is inconsistent with the position that Section 251 requires a change.

Section 251(g) requires that LECs provide access to IXCs in accordance with the same equal access and nondiscriminatory interconnection restriction and obligations (including receipt of compensation) that currently apply until the Commission prescribes new governing regulations. The Commission is required under Section 251(d) to complete all actions "necessary to establish regulations to implement the requirements of this section [251]. However, while Section 251(g) recognizes that the Commission has discretion to address access charges, it does not require such a review. Therefore, access charge review is not necessary to implement the requirements of Section 251 and should not be included in the 251 rulemaking proceeding.

E. The Act's legislative history supports this interpretation.

While the plain language of the Act makes clear that IXC access charges are not governed by Section 251, the legislative history eliminates any doubt. In describing Section 251 of S.652 on which Section 251(c) of the Act is based, the Joint Explanatory Statement of the Committee of Conference states:

> The obligations and procedures prescribed in this section do not apply to interconnection arrangements between local exchange carriers and telecommunications carriers under section 201 of the Communications Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the Commission access charge rules. Joint Explanatory Statement of the Committee of Conference at 117.

Further, the Senate Committee on Commerce, Science and Transportation Report on S. 652 states, "nothing is Section 251 is intended to change or modify the FCC's rules at 47 CFR 69 et seq. regarding the charges that an interexchange carrier pays to local exchange carriers for access to the local exchange carrier's network." S.Rpt.104-23 at 22.

There is no legislative history that indicates any intent to the contrary. Indeed, had Congress intended such a fundamental restructuring of interstate access charges by Section 251, it would have said so.

F. Revising access charges has implications for universal service.

The Act calls for a Joint Board to make recommendations with regard to universal service. Section 254. The Joint Board has one year to make recommendations to the FCC, and the Commission then has 3 months to implement those recommendations.

It is widely acknowledged that access charge pricing has implications for universal service. Given this link, if Congress had intended to direct changes to the access charge regime prior to the thorough year long examination of universal service, it would have said so. It did not. Therefore, access charges should not be included in the six month Section 251 rulemaking proceeding.

AMERITECH'S PROPOSED IMPLEMENTATION OF SECTION 251

I. INTRODUCTION

In the Telecommunications Act of 1996 (the "1996 Act"), the FCC is charged with the responsibility of establishing regulations to implement the newly imposed statutory duties of Section 251, which are designed to remove barriers to a competitive marketplace. In fulfilling this mandate, the Commission should establish broad national guidelines to assist the industry and the States in the process of implementing their duties under the 1996 Act and step in if a State fails to carry out its responsibilities under Section 251.

Section 251 imposes a broad interconnection obligation on all telecommunications carriers and additional more specific obligations on local exchange carriers ("LECs") and incumbent LECs. One of the duties Congress imposed on incumbent LECs and telecommunications carriers requesting interconnection is the "duty to negotiate in good faith . . . terms and conditions of agreements." 47 U.S.C. § 251(c)(1). This duty to negotiate is a cornerstone of the 1996 Act's interconnection policy. It reflects Congress' judgment that the specific terms and conditions of interconnection should, if possible, be determined by the parties involved -- namely, the incumbent LEC and the telecommunications carrier requesting interconnection.

The terms and conditions under which interconnection should be provided are likely to vary from case to case, depending upon the needs and capabilities of both parties involved. Moreover, the issues raised by various scenarios are likely to be highly technical and complex. Rather than attempt to prescribe "one size fits

all" rules for all of the various permutations, Congress correctly perceived that the incumbent LEC and the interconnector are in the best position to determine what is fair and therefore best meets their needs.

Indeed, under the framework of the 1996 Act, both the LEC and the requesting interconnector have strong incentives to reach an agreement. If either fails to negotiate in good faith, they risk having an unfavorable agreement imposed on them by arbitration. In addition, the Bell Operating Companies have the added incentive that an agreement will facilitate their entry into the long-distance marketplace. Finally, any agreement that an incumbent LEC offers to one party must generally be offered to others under the same terms and conditions. Thus, the bargaining power of any one requesting interconnector, such as AT&T, may inure to the benefit of all.

This is not to say that interconnection need be left entirely to the negotiation process. To the contrary, the 1996 Act authorizes the Commission to establish general policies and minimum standards that will set the ground rules and define the parameters for negotiations. In certain instances, the Commission may even need to establish more detailed rules. In general, however, to be faithful to congressional intent, the Commission should be careful not to prescribe overly detailed rules that preempt or even effectively foreclose the negotiation process.

The Commission should also consider utilizing the positive steps taken by progressive States, many of which have been working years to open up local exchange services to competition. These States have developed

extensive records, have undertaken complex analyses, and have evaluated the competing interests on the issues of interconnection and unbundled access to network elements. Moreover, many States are far along in implementing competition, and carriers have established business practices and have invested substantial capital to conform to existing State regulations designed to open the local markets. Reinventing the wheel on all of these issues could have the unintended result of impeding competition in those more progressive States. The Commission therefore should be cognizant of the effect any regulations it promulgates may have on existing State regulation and industry practices. Such an approach is consistent with congressional intent to allow States in the first instance to review interconnection agreements and arbitrate disputes between participant carriers within the context of broad Commission guidelines. See 47 U.S.C. § 252(a)-(e).

Crafting rules that allow States that have been leaders in promoting local exchange competition to maintain and build upon their pro-competitive frameworks is in no way inconsistent with the Commission's responsibilities under the 1996 Act. On the contrary, such rules would give States that have taken steps to promote competition the flexibility to continue forward, while providing a blueprint to those States that are not as advanced.

In addition to building upon the work of the most progressive States, the Commission should also, when appropriate and consistent with the 1996 Act, build upon its own work in promoting competition. For example, the Commission has already initiated a proceeding to consider number portability. The Commission can and should use

the record in that proceeding as a basis for prescribing number portability rules pursuant to the 1996 Act. On the other hand, the Commission should also consider which (if any) of its pending rulemaking proceedings have been effectively superseded by the 1996 Act and thus should be terminated.

Finally, the Commission should in its notice of proposed rulemaking clearly set the boundaries of this proceeding. In particular, it should clarify that Section 251 does not require any changes to the Commission's current access charge regime as part of its implementation of the new statutory duties under Section 251. Indeed, to interpret the 1996 Act otherwise conflicts with the plain language of Section 251(i), which ratifies and leaves unaffected the Commission's jurisdiction over interstate services, including access charges. Moreover, such an interpretation would transfer the regulation of interstate charges from the Commission to the States, which Congress clearly did not intend and which would be directly contradictory to the Commission's authority under Section 201. Such a conclusion would also wreak havoc in the marketplace. Had Congress intended to make significant shifts in regulation it would have said so expressly. Finally, although Section 251(g) recognizes that the Commission has discretion to review its access rules, such review is not required at this time to implement its responsibilities under Section 251.[1]

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[1] For a more extensive discussion on why Section 251 does not affect the current access charge regime, see Attachment 1 hereto.

Set forth below is the text of proposed regulations which implement the statutory requirements of Section 251, introduced by brief rationales for each.

II. GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS

In Section 251(a)(1), Congress provides that all telecommunications carriers have general interconnection obligations. Section 251(a)(2) contemplates that procedures or standards concerning interface specifications and interoperability may ultimately be necessary once the local marketplace becomes more fully competitive. However, as recognized by Congress, interface specifications and interoperability should be developed in the context of Section 256 of the 1996 Act.[2] Thus, the Commission only needs to address Section 251(a)(1) in its upcoming Section 251 proceeding. As discussed in the introduction, there is no need for detailed rules as most of the interconnection issues will be resolved through negotiations.

Rule

> (Under Section 251(a)(1)) Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

III. RESALE

The rules implementing the resale provisions of the 1996 Act should establish clear principles for re-

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[2] The Commission has announced that it intends to address Section 256 issues at a subsequent date. See Draft FCC Implementation Schedule for S.652 (revised Feb. 12, 1996) at 5.

sale. As the Commission -- and now Congress -- has long recognized, resale serves the public interest. Specifically, resale fosters competition by allowing new competitors to enter the marketplace without the substantial up-front costs associated with building facilities-based networks. Moreover, it affords resellers an opportunity to develop "submarkets" for services that may not be served by the facilities-based carrier and puts pressure on both resellers and facilities-based carriers alike to operate more efficiently. More importantly, in a competitive environment, the consumer ultimately benefits through greater variety and availability of services and lower costs.[3]

The statutory language of Sections 251(b)(1) and 251(c)(4)(B) thus require both LECs and incumbent LECs not to prohibit resale and not to impose unreasonable or discriminatory terms and conditions on resale. Reasonable restrictions on resale, however, have long been recognized by the Commission as appropriate to further public policy objectives,[4] and Congress did not

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[3] See Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, *Report and Order*, 60 F.C.C.2d 261, 298-302 (1976)(subsequent history omitted) ("Resale and Shared Use I"); see also Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, *Report and Order*, 83 F.C.C.2d 167, 174-80 (1980) (subsequent history omitted) ("Resale and Shared Use II").

[4] See Resale and Shared Use II, 83 F.C.C.2d at 174 n.17 (finding certain price discriminations lawful); see also Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, *Notice of Proposed Rulemaking and Order*, 6 FCC Rcd 1719, 1721 (1991).

change that determination in the 1996 Act. This statutory concept should be delineated in the implementing Federal regulations with general guidelines articulated in the accompanying order.

By adopting such an approach, the Commission will have satisfied its obligation under the 1996 Act and can leave the case-by-case decision-making process (i.e., whether a specific practice is unreasonable or a prohibited limitation on resale) to the States. State commissions not only have acquired substantial experience in balancing competing interests in opening local exchange services to competition, but have an important role in ensuring that resale acts to further the public interest. States are also in the best position to make such determinations, especially where important issues such as State-specific universal service policies are concerned. Nonetheless, the Commission may consider providing guidance to the States for purposes of evaluating the reasonableness of conditions or limitations on resale. Specifically, in determining reasonableness, States should consider whether the condition or limitation furthers or inhibits competition or some other State interest, such as universal service.

The implementing rules proposed below thus would impose a duty on all LECs to allow for resale of telecommunications services without imposing unreasonable or discriminatory conditions or limitations on resellers of such services. See 47 U.S.C. § 251(b)(1). Incumbent LECs would have an additional duty under the rule to offer resellers "wholesale" rates for those telecommunications services that it provides at "retail" to non-telecommunications carriers. See 47 U.S.C.

§ 251(c)(4)(A). At the same time, the rule would defer to the States the issue of whether particular resale restrictions are reasonable and nondiscriminatory.

In deferring to the States, however, the Commission should provide general guidance as to what type of restrictions should be considered reasonable. For example, the Federal implementing regulations should reflect the permissibility of class-of-subscriber restrictions expressly contemplated under Section 251(c)(4)(B). In addition, implementing regulations should reflect that a reasonable State certification or licensing requirement for the resale of the requested services would not be deemed either a prohibition or an unreasonable restriction on resale, or a barrier to entry into local service prohibited by Section 253.

Moreover, the resale obligation should not be construed in a way that would prohibit or discourage discounts, service packages, or bona fide promotions. The Commission has long recognized that promotions foster competition, stimulate network usage, and increase customer awareness of products and services.[5] Such marketing tools are standard for LECs and resellers alike and generally evidence a high level of competition in the market. Requiring LECs to offer promotions for resale -- particularly at wholesale rates -- would effectively preclude LEC use of such promotions. Surely, it was not the

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[5] See Policy and Rules Concerning Rates for Dominant Carriers, *Memorandum Opinion and Order on Reconsideration*, 6 FCC Rcd 665, 670 (1991); Policy and Rules Concerning Rates for Dominant Carriers, *Order and Notice of Proposed Rulemaking*, 8 FCC Rcd 3715, 3716 n.11 (1993).

intent of Congress to deny LECs the tools routinely used by all carriers to promote network usage, or to deny consumers the benefits that promotions can offer. Thus, States should be permitted to restrict or limit the resale of bona fide promotions (e.g., per service promotions having a total duration of 120 days or less in a calendar year) and to not require resale of such promotions at wholesale rates.

In addition to permitting restrictions on the resale of promotions, the Commission should issue guidelines to States with respect to the treatment of services for which there may be multiple rates (e.g., services with off-peak and on-peak rates, or bundled discount packages). LECs are obligated under the 1996 Act to offer retail services for resale. This does not obligate them to make available every rate structure and every price offered, so long as the overall resale rate is consistent with the intent of Congress. Indeed, requiring LECs to offer for resale every rate structure and discount could effectively deny LECs the competitive tools needed to compete in the marketplace -- a burden that would skew competition and deny consumers the efficiencies that should flow therefrom. To address this concern, consistent with the resale provisions of the 1996 Act and the intent of Congress, the Commission should propose that it shall not be an unreasonable restriction on resale for LECs to offer a single resale rate when more than one retail rate is offered in connection with a single service, provided that the single rate represents the weighted average of all of the retail rates for the service in question.

Rules

(a) (Under Section 251(b)) Subject to reasonable and nondiscriminatory restrictions as States may permit, each local exchange carrier has the duty not to prohibit, and not to impose any unreasonable or discriminatory limitations on, the resale of its telecommunications services.

(b) (Under Section 251(c)(4)) Subject to reasonable and nondiscriminatory restrictions as States may permit, each incumbent local exchange carrier has an obligation to offer for resale, at wholesale rates, any telecommunication service provided by such carrier at retail to subscribers who are not telecommunications carriers.

(c) In considering the reasonableness of any terms and conditions imposed on resale, States may consider the effects that such terms and conditions would have on competition or on any other State interest.

IV. NUMBER PORTABILITY

Under Section 251(b)(2), LECs are required to provide number portability, at the same location when a customer changes telephone exchange service providers (i.e., provider number portability), to the extent technically feasible. As demonstrated by the statutory definition of number portability,[6] Congress has concluded that provider number portability offers substantial public interest benefits because it promotes competition among service providers by enabling the consumer to

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[6] See 47 U.S.C. § 153(a)(46) (defining number portability as the ability to retain existing numbers, at the same location, when switching from one telecommunications carrier to another (i.e., provider number portability)).

switch telephone exchange service carriers without the disruption and costs of changing telephone numbers.

Because the record in the existing number portability proceeding, CC Docket No. 95-116, has been fully developed, it would be the most efficient and expeditious mechanism for establishing specific standards for provider number portability required under Section 251 and interim number portability required under Section 271. To the extent that other types of number portability (i.e., location and service number portability) are addressed, CC Docket No. 95-116 could be bifurcated so as to avoid delaying the Commission's actions on provider number portability required under Section 251. Regulations implementing the statutorily required duty to provide number portability, at the same location, should be adopted in the context of CC Docket No. 95-116.[7]

V. DIALING PARITY

Dialing parity is statutorily defined as the ability to route automatically, without the use of any access code, telecommunications traffic to a customer's carrier of choice. See 47 U.S.C. § 153(a)(39). Section 251(b)(3) obligates LECs to provide dialing parity in two different contexts -- dialing parity with competing pro-

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[7] To avoid subsequent confusion under Section 271, clarification should be made that, prior to the deadline by which all LECs must implement number portability, interim number portability and cost recovery mechanisms other than final rules for competitively neutral recovery of portability costs will be sufficient for purposes of evaluating a Bell Operating Company's compliance with the number-portability prong of the "Competitive Checklist."

viders of telephone exchange service (local dialing parity) and dialing parity to telephone toll service carriers (toll dialing parity). In the local context, dialing parity by definition simply means that customers are free to select a competing provider of telephone exchange service, and telephone exchange customers of one telephone exchange carrier can access customers of another such carrier without dialing additional digits or codes. In the toll context, dialing parity means the ability of telephone exchange service customers to have their toll calls routed to a toll carrier of their choice without having to dial additional digits or codes and without unreasonable dialing delays. Because the Commission has already required interLATA toll dialing parity, the implementing regulations need only address intraLATA toll dialing parity.[8]

Separate from the duty to provide dialing parity, Section 251(b)(3) also obligates all LECs to provide to competing providers of telephone exchange service and telephone toll service nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing. These obligations general-

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[8] For purposes of compliance by Bell Operating Companies with the "Competitive Checklist," Section 271(e)(2) expressly provides that, except for certain grandfathered States, the duty to provide intraLATA toll dialing parity does not arise until the earlier of the date by which such company is authorized to provide interLATA service originating in the State or February 8, 1999. Thus, unless the Bell Operating Company is seeking entry in a grandfathered State, it is required to implement intraLATA toll dialing parity coincident with its exercise of in-region interLATA authority.

ly are self-effectuating and do not require Commission rules. The Commission, however, should clarify that the duty to provide access to telephone numbers is met through the nondiscriminatory assignment of NXX codes pursuant to the Central Office Codes Assignment Guidelines.

Rules

(a) (Under Section 251(b)(3)) Each local exchange carrier has the duty to provide:

(1) dialing parity to competing providers of telephone exchange service and telephone toll service, with no unreasonable dialing delays; and

(2) nondiscriminatory access, upon request of such competing providers, to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays.

(b) Dialing parity to competing providers of telephone exchange service is the ability of end users of one local exchange carrier to place local calls to an end user of a competing local exchange carrier without dialing additional digits or codes and without unreasonable dialing delays.

(c) Toll dialing parity is the ability of end users of a local exchange carrier to route toll calls to a presubscribed toll service provider of such end user's choice on the same basis as other toll service providers without the need to dial additional digits or codes and without unreasonable dialing delays.

(d) Local exchange carriers, to the extent such carriers are the central office code administrator in a given area, shall assign NXX codes on a nondiscriminatory basis pursuant to the Central Office Code Assignment Guidelines.

VI. ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

Under Section 251(b)(4), LECs have the duty to afford access to poles, ducts, conduits and rights-of-way on a nondiscriminatory basis to all telecommunications carriers. To fulfill this duty, LECs should be required to make available to all competing local providers on a nondiscriminatory basis existing arrangements regarding access to poles, ducts, conduits, and rights-of-way owned or controlled by the LEC. The Commission, however, should clarify that this duty applies only to the extent that a LEC has legal authority to confer access either through ownership or control. A LEC should not be required to provide access where, for example, the city, state, or a private entity has legal control. To require otherwise would impose a legal impossibility -- a result Congress could not have intended.

Rules

> (Under Section 251(b)(4)) Except as the Commission otherwise provides by rule, each local exchange carrier has the duty to afford access to the poles, ducts, conduits, and rights-of-way owned or controlled by such carrier to competing providers of telecommunications services on a nondiscrimina-tory basis among such competing providers, to the extent that the local exchange carrier has the legal authority to confer such access to poles, ducts, conduits, and rights-of-way.

VII. RECIPROCAL COMPENSATION

Section 251(b)(5) imposes an obligation on LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Consistent with Section 252(d)(2)(A)(i), the duty to establish reciprocal compensation arrangements should

apply only in the context of the transport or termination of telecommunications traffic by carriers. Procedures governing compensation arrangements for the transport and termination of toll service -- namely existing access tariffs -- are already in place.

Rule

> (Under Section 251(b)(5)) Each local exchange carrier has a duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications services, but only in connection with the exchange of the local traffic from the subscribers of another telecommunications carrier.
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> Compensation arrangements for the provision of exchange access shall be governed by prevailing access tariffs regardless of from whom such traffic is received.

VIII. INTERCONNECTION

Under Section 251(c)(2), incumbent LECs have the duty to provide interconnection, for the equipment and facilities of any requesting telecommunications carrier, at any technically feasible point within the incumbent LEC's network for the transmission and routing of telephone exchange service and exchange access. The statute also requires that the interconnection be at least equal in quality to the interconnection that the incumbent LEC provides to itself or to any other party, and that such interconnection be provided at just, reasonable, and nondiscriminatory rates, terms, and conditions.

The ultimate goal, as expressed by Congress in the 1996 Act, is that interconnection will evolve naturally through the operation of competitive market forces and negotiations between the connecting carriers. Never-

theless, the Commission should find that the following interconnection arrangements for the routing and termination of telephone exchange service and exchange access are technically feasible:

> (1) an arrangement whereby either LEC may interconnect its end or tandem office to the end or tandem office of the other LEC though transport services between their offices purchased by the requesting LEC from the other LEC; and
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> (2) an arrangement whereby either LEC may interconnect its end or tandem office to an end or tandem office of the other LEC through transport facilities or services provided by the requesting LEC or obtained by it from a third party. In either case, the transport facilities or services are terminated in the other LEC's office pursuant to a collocation arrangement.

While the foregoing interconnection arrangements are currently technically feasible, only incumbent LECs are obligated to provide such interconnection. Collocation (see *infra* part XI) in the interconnection context means an interconnection arrangement in which the facilities of one telecommunications carrier are terminated in transmission equipment necessary for interconnection installed or maintained in another carrier's central office for the sole purpose of interconnecting the carrier's telephone exchange and exchange access service to the telephone exchange and exchange access service facilities or network of the other carrier.

The technically feasible interconnection arrangements described above fulfill the overarching goal of ending exclusive control over local loop transmission by the incumbent LEC. Other technically feasible interconnection arrangements are not foreclosed. Rather, such other interconnection arrangements should be the product

of negotiations between the connecting carriers through a "bona fide" request process. As set forth below, such a process would weed out spurious and unreasonable interconnection requests and provide a process for efficient resolution of issues.

Rule

> (Under Section 251(c)(2)) Each incumbent local exchange carrier shall provide to requesting telecommunications carriers interconnection with such incumbent local exchange carrier's network at any technically feasible point for the transmission and routing of telephone exchange service and exchange access, at rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Such interconnection shall be at least equal in quality to that provided by the incumbent local exchange carrier to itself, any subsidiary or affiliate, or any other party. For purposes of this section, equal in quality means the same or equivalent interface specifications, installation, and repair intervals.

IX. ACCESS TO UNBUNDLED NETWORK ELEMENTS

Section 251(c)(3) provides that an incumbent LEC must provide, upon request, nondiscriminatory access to network elements on an unbundled basis to any telecommunications carrier for the provision of telecommunications service. The Commission's implementing rules should contain a general provision summarizing the statutory requirement. The implementing rules also need to clarify that carriers may only request a network element that is to be used in the provision of a telecommunica-

tions service. Both Section 251(c)(3) and the definition of network element contain this limitation.[9]

In addition, the Commission's implementing rules should establish a set of network elements that are technically feasible and thus should be made available pursuant to Section 251(c)(3). The set should include the following three types of unbundled network elements and access arrangements:

> (1) Local loop transmission (or local loop)[10] between a LEC's end office and the premises of the LEC's end user, unbundled from local switching and other services. Telecommunications carriers ordering unbundled local loops can connect to the local loop via a cross connect provided by the LEC from its main distributing frame, or other designated frame or point of demarcation, to the requesting carrier's transmission facilities terminated in the LEC's office through a collocation arrangement pursuant to Section 251(c)(6).
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> (2) Local transport[11] from the trunk side of the LEC's local switch in such LEC's end or tandem office, unbundled from switching and other services.

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[9] The 1996 Act defines a network element as "a facility or equipment used in the provision of telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment . . . and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." 47 U.S.C. § 153(a)(45).

[10] A "local loop" is a transmission path between the network interface or other point of demarcation on the end user's premises and the main distributing frame or other frame or point of demarcation designated by the LEC in its central office.

[11] "Local transport" is a dedicated transmission path between end offices and/or tandem offices.

> Unbundled local transport can generally be connected through arrangements included within existing expanded interconnection services under the Commissions access rules and applicable LEC access tariffs.
>
> (3) Local switching,[12] unbundled from transport, loop, and other services. Telecommunications carriers ordering unbundled local switching can connect to the LEC's local switching through a port, which provides access to the capabilities derived from the LEC's local switch, including local usage and other capabilities that can be ordered in conjunction with the port on an unbundled basis. The requesting telecommunications carrier can connect to the port at a frame or other point of demarcation designated by the LEC via a cross connect provided by the LEC to the requesting telecommunications carrier's transmission facilities terminated in the LEC's office through a collocation arrangement pursuant to Section 251(c)(6).

Collocation (see *infra* part XI) in the context of unbundled network elements means a collocation arrangement in which the facilities of one telecommunications carrier are terminated in transmission equipment, necessary for connection, installed or maintained in another telecommunications carrier's central office for the sole purpose of assessing the other carrier's network elements.

Such a set of network elements tracks the requirements of the Illinois Commerce Commission Order,[13]

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[12] "Local switching" is the capability of connecting, on a call-by-call basis, telephone exchange service end users of LECs' public switched networks to each other.

[13] See Proposed Introduction of a Trial of Ameritech's Customer First Plan in Illinois, *Order* Dkt. No. 94-0301 (Apr. 7, 1995).

as well as the access to unbundled network elements required for purpose of compliance with the "Competitive Checklist" under Section 271. Access to other network elements should be subject to negotiations of the parties through a "bona fide" request process. As set forth in the discussion of the bona fide request process below, such a process would weed out frivolous claims and provide a process for efficient resolution of issues.

Under Section 251(d)(2)(B), the FCC must consider whether "the failure to provide access to such network elements would impair the ability of the [requesting] telecommunications carrier . . . to provide the services that it seeks to offer." The most expedient manner in which to address this issue is to require the requesting telecommunications carrier to establish up front that the failure to obtain the requested element would impair its ability, or is necessary (in the case of proprietary network elements),[14] to provide such service. The Commission should also require that, in making this showing, the requesting carrier demonstrate that the requested elements cannot otherwise be provided by the requesting carrier or obtained from another source, including resold telecommunications services offered by the requested carrier, and that the failure to obtain the element would materially diminish the quality of the telecommunications service.

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[14] Network elements which are proprietary in nature must be maintained in confidence by the telecommunications carrier to whom access is provided. Moreover, the provision of statutorily required access to proprietary network elements in no way waives the proprietary nature of such element.

Rules

(Under Section 251(c)(3)) Each incumbent local exchange carrier shall provide to requesting telecommunications carriers, for the provision of telecommunications services, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of a State-approved agreement and the requirements set forth in Section ____ of this part.

(a) A network element obtained under this section may be used by the requesting carrier, in combination with its own facilities, only to provide a telecommunications service, including obtaining billing and collection, transmission, and routing, of the telecommunications service.

(b) Upon request, all incumbent local exchange carriers shall provide to requesting telecommunications carriers for purposes of providing a telecommunications service:

(1) local loop transmission from the central office to a customer's premises, unbundled from local switching or other services;

(2) local transport from the trunk side of the wireline local exchange carrier switch, unbundled from switching or other services;

(3) local switching unbundled from transport, local loop transmission, or other services; and

(4) other access to unbundled network elements pursuant to the negotiations required by Section 252 of the Act, including a bona fide request process.

(c) An incumbent local exchange carrier is required to provide a network element only if the requesting telecommunications carrier establishes that its failure to obtain such network element would impair its ability to provide the telecommunications services involved. For purposes of this